


Military vs. Civilian Jurisdiction

- ♦ Military and Civilian Court have concurrent jurisdiction in cases of crimes by military personnel off-base.
 - Can be prosecuted in both, though rare.
- ♦ Generally cooperation ensures appropriate justice
- ♦ Victim professionals in both collaborate.
- ♦ Counseling comes from Family Service's special MSWs.
- ♦ Beginning to contract out to private counselors.

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Military Law

- ♦ Uniform Military Code (UCMJ)
 - Enacted by Congress.
 - Establishes the substantive and procedural laws, governing the military justice system.
- ♦ Manual for Courts-Martial (MCM)
 - Promulgated by the President.
 - Prescribes the additional procedural rules and punishments.



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Military Law Enforcement

- ♦ Commanding Officer
 - Minor infractions
 - Disciplinary problems; insubordination
- ♦ Military Police (MPs)
 - Minor crimes; misdemeanors
- ♦ Criminal Investigative Command (CID)
 - Serious Crimes
- ♦ Judge Advocates General – JAGs (Military Lawyers)
 - Advise all of the above throughout the process.

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Powers of the Commanding Officer

- ♦ Commander has broad powers of discretion when it comes to disposition of cases.
- ♦ Commander may choose to take no action.
 - Can decide, based on available information, that no action is justified or necessary.
 - Case is effectively dropped.
- ♦ May initiate **administrative action** against a service member.
 - Administrative action not punitive in nature — it is remedial.
 - Compulsory **counseling; reprimand; involuntary separation**

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Commander's Discretion in Disposition

- ♦ May dispose of the offense with **non-judicial punishment**.
 - Hearing presided over by the Commander.
 - Informal inquiry.
 - Applies only to minor offenses.
 - Defendant may call witnesses;
 - consult a JAG (judge advocate)
 - Rules of evidence do not apply.
 - Commander/Judge determines guilt beyond reasonable doubt.
 - Defendant can appeal Commander's decision to the next higher Commander.

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Commander's Discretion

- ♦ May dispose of the offense by court-martial.
 - Commander determines charges, and crimes are sufficiently serious.
 - Refer the case for court-martial.
- ♦ Commander may choose among 3 levels of court-martial:
 - Summary Court-Martial
 - Special Court-Martial
 - General Court-Martial



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Court-Martial

- ♦ Summary Court-Martial
 - Minor offenses
 - Applies to enlisted-personnel only
 - Officer presides
 - No appointed counsel (though they may hire private counsel)



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Court-Martial

- ♦ Special Court-Martial
 - Presided over by Military Judge, or Judge and three members (jurors)
 - Prosecutor — “Trial Counsel”
 - Requested Defense Counsel — for free or private counsel at defendant’s expense



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Court-Martial Process

- ♦ Rules of Evidence patterned from Federal Code.
- ♦ Standard for guilt = “beyond a reasonable doubt”
- ♦ If found guilty, the sentencing phase begins immediately.
- ♦ May appeal decision to the Departments
- ♦ Court of Criminal Appeals and then to the Court of Appeals of the Armed Forces and the Supreme Court.
- ♦ Decisions are based solely on matters of law.



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Penalties

- ♦ Bad-Conduct Discharge
- ♦ Dishonorable Discharge
- ♦ Dismissal
- ♦ Term of Incarceration
 - 1– 5 years = served in service brig or stockade (several spread across the U.S.)
 - 5 or more = served in Leavenworth
- ♦ ETC.



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Court-Martial

- ♦ General Court-Martial
 - Most serious crimes
 - Preceded by Article 32 investigation – similar to a grand jury investigation,
 - Except Accused can appear w/ counsel, cross-ex, present evid
 - Recommendation is made from Art. 32 hearing as to whether to go forward
 - Convening court – either a military judge or a judge and 5 members (jurors), one third of which must be enlisted men if the defendant so requests.



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DoD Victim and Witness Assistance Directive

- ♦ Introduced in 1994 (military equivalent of Federal Victim Witness Protection Act).
 - Be treated with fairness and respect.
 - Be reasonably protected.
 - Be notified of court-martial proceedings.
 - Be present at court-martial proceedings.
 - Confer with the government attorney.
 - Available restitution.
 - Know outcome of trial and release from confinement.

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Army Sexual Assault Response Initiative

- ♦ Unit Victim Advocates
 - Trained on the available services, 1st line help
- ♦ Installation Victim Advocates
 - More able to provide continuing assistance
- ♦ Restricted vs. Unrestricted
 - Restricted reports allow the victim to receive services without the fear of the criminal process, “re-victimization fear”

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DoD Interdisciplinary Approach

- | | |
|---------------------------------------|-------------------------------|
| ♦ Law enforcement | ♦ Victim/Witness Liason |
| ♦ Criminal investigators | ♦ Equal opportunity personnel |
| ♦ Chaplains | ♦ Judge advocates |
| ♦ Family advocacy personnel | ♦ Unit commanding officers |
| ♦ Sexual Assault Response Coordinator | ♦ Corrections personnel |
| ♦ Victim Advocate | |
| ♦ ER personnel | |

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Implementation of Directive

- ♦ Each Service has developed its own regulations to further implement the Directive.
- ♦ Each has established an interdisciplinary Victim Witness Assistance Council.
- ♦ Most JAG offices have a full or part-time victim/witness assistance specialist.



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Oversight for Implementation of Victim Assistance Programs

- ♦ Office of the Secretary of Defense
- ♦ Dept. of the Army
- ♦ Dept. of the Air Force
- ♦ Dept. of the Navy
- ♦ Marine Corps
- ♦ Coast Guard



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Related Special Military Programs

- ♦ Family Advocacy Programs
 - Military equivalent of social services.
 - Handles all domestic violence and child abuse cases.
- ♦ Equal Opportunity Program
 - Sexual Harassment Cases
- ♦ Sexual Assault Review Board (SARB)
 - Review victim responses for every instance of Sexual assault whether restricted or unrestricted.

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Special Compensation Programs

- ♦ Transitional compensation
 - Separation/divorce as result of domestic violence.
 - Support payment from spouse; up to 36 months
- ♦ Payments from retired pay for abused dependents
- ♦ Article 139, UCMJ – Property claims
 - Restitution for Property Damage.
- ♦ Foreign Claims Act
 - Claims for damage done by service members to foreign citizens and their property.

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Special Compensation Programs

- ♦ Restitution from offender
 - Is no right to restitution in the military.
 - But can be included as condition of pretrial agreement (plea bargain).
- ♦ Compensation for military victims under state programs
 - State Compensation Funds
 - Assuming Military Service benefits are exhausted.
 - Medical
 - Funeral - Will not cover non-military personnel

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